SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 417

UNITED STATES DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, PETITIONER

vs.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

INDEX

	Original	Print
Record from County Court of Roberts County, South Dakota	1	1
Proof of claim of United States Department of Agriculture	1	1
Notes	6	5
Final report, petition for settlement and discharge of administrator	13	9
Order approving final report, final decree and discharge of administrator	18	12
Notice of appeal to the Circuit Court of Roberts County	23	17
Proceedings in Circuit Court of Roberts County	26	18
Order sustaining allowance of claims	26	18
Notice of appeal to Supreme Court of South Dakota	28	19
Proceedings in Supreme Court of South Dakota	32	21
Opinion, Warren, J	32	21
Judgment	47	30
Remittitur	48	31
Stipulation as to record	52	33
Order allowing certiorari		35

712547—46——1

1 In County Court of Roberts County, South Dakota

Proof of Claim of United States Department of Agriculture

Filed March 2, 1942

U. S. DEPARTMENT OF AGRICULTURE
FARM CREDIT ADMINISTRATION
EMERGENCY CROP AND FEED LOAN OFFICE
OMAHA, NEBRASKA

MEMORANDUM

To All Receivers, Referees, Executors, Administrators, Assignees, and Courts Dealing With Insolvent, Bankrupt, or Deceased Borrowers of the Emergency Crop and Feed Loan Office, Farm Credit Administration, Omaha, Nebraska:

The United States Government, acting through the Secretary of Agriculture or through the Governor of the Farm Credit Administration, has made emergency crop and feed loans to farmers. Loans of this character are now administered by the Farm Credit Administration, of which this office is a part.

Attention is directed to the provisions of Sections 191 and 192 of Title 31, Chapter 6, of the United States Code, entitled "Debts by, or to, the United States." These Sections, also designated Sections 3466 and 3467 of the Revised Statutes, are as follows:

PRIORITY ESTABLISHED

31 U. S. C. 191 (R. S. # 3466):

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

LIABILITY OF FIDUCIARIES

31 U. S. C. 192 (R. S. # 3467):

"Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts, before he satisfies and pays the

debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid."

Therefore, in conformity with Section 191 quoted above, claims filed by this office should be paid prior to the payment of other claims.

Approved and allowed September 1, 1942, for the sum of $412.94 and $110.86.

GEORGE G. REMUND,
Adm.

2

U. S. DEPARTMENT OF AGRICULTURE
FARM CREDIT ADMINISTRATION
EMERGENCY CROP AND FEED LOAN OFFICE
OMAHA, NEBRASKA

FEBRUARY 28, 1942.

34D 325176—William Buttke, 34W 77527—Corona, South Dakota, Roberts County.

CLERK OF COUNTY COURT,
Roberts County, Sisseten, South Dakota.

There is listed below a statement of the above-captioned borrower's indebtedness to this office:

Year and kind of loan	Loan No.	Principal sum	Interest to 6-15-42	Total	Daily interest after 6-15-42
1934 drouth	325176	$290.00	$119.60	$409.60	$0.0435
1935 crop	77527	80.00	29.90	109.90	.0120

Make your remittance payable to Governor, Farm Credit Administration, and forward direct to this office. If you prefer, you may tender your remittance to our local field supervisor.

This is in reply to—

Very truly yours,

John T. Ashford,
JOHN T. ASHFORD,
Regional Manager.

cc. George G. Remund, admr.

[File endorsement omitted]

Exhibit "A"

ESTATE OF WILHELM BUTTKE, DECEASED

To the GOVERNOR, Farm Credit Administration for and on behalf of the United States of America, Dr.:

34D 325176

Money loaned to said decedent by the Governor, Farm Credit Administration, acting pursuant to the Act of Congress approved June 19, 1934, principal sum as follows, to wit:

July 28, 1934—34D 325176	$40.00
Sept. 14, 1934—Supp. 325176	40.00
Nov. 14, 1934—Supp. 325176	30.00
Dec. 18, 1934—Supp. 325176	50.00
Feb. 13, 1935—Supp. 325176	50.00
Mar. 19, 1935—Supp. 325176	80.00
	290.00

as is evidenced by his promissory notes dated July 20, 1934, September 10, 1934, November 5, 1934, December 12, 1934, January 31, 1935, March 11, 1935; that no part thereof has been paid and there remains due the entire amount so loaned—$290.00—with interest at the rate of five and one-half per centum (5½%) per annum, accounting from the date of each loan advance until paid; true and correct copies of which said notes are attached hereto and made a part hereof.

34W 77527 8-20-40

Money loaned to said decedent by the Governor, Farm Credit Administration, acting pursuant to the Act of Congress approved February 23, 1934, principal sum—$80.00—as is evidenced by his promissory note dated August 13, 1934; that no part thereof has been paid and there remains due the entire amount so loaned—$80.00—with interest at the date of five and one-half per centum (5½%) per annum, accounting from August 31, 1935; a true and correct copy of which said note is attached hereto and made part thereof.

---

5 In County Court of Roberts County

This claim of the United States of America entitled to priority of payment under Title 31 Section 191 of the United States Code (Revised Statute 3466).

IN THE MATTER OF THE ESTATE OF WILLIAM BUTTKE, DECEASED, ALSO KNOWN AS WILHELM BUTTKE, JR., OR WILHELM BUTTKE

STATE OF NEBRASKA,
County of Douglas, ss:

John T. Ashford, Manager, Emergency Crop and Feed Loan Office, Farm Credit Administration, Omaha, Nebraska, an authorized agent of the Governor, Farm Credit Administration, for and on behalf of the United States of America, being sworn, deposes and says that the amount of the attached claim against the estate of William Buttke, also known as Wilhelm Buttke, Jr., or Wilhelm Buttke, deceased, late of the vicinity of Corona, County of Roberts, State of South Dakota, marked Exhibit "A", is justly due and owing to the said Governor, Farm Credit Administration. That no payments have been made thereon which are not credited upon said claim, and that there are no set-offs or counter-claims to it to the knowledge of claimant or affiant. That this affidavit is not made by the claimant because, since claimant, Governor, Farm Credit Administration, is acting as the agent of the United States in making and collecting loans to farmers throughout the United States, it would be physically impossible for claimant, Governor, Farm Credit Administration, personally, to file claims and perform other tasks in connection with the administration and collection of the loans he has been authorized to make and collect by Congress of the United States. That this loan was made under the personal supervision of affiant or his predecessors in office and he has under his control and in his charge all the records of this account and is therefore qualified to make a correct statement of the amount due the Governor, Farm Credit Administration, from the deceased.

That with regard to any loan granted by the Secretary of Agriculture, the Governor of the Farm Credit Administration is successor in interest to the Secretary of Agriculture by virtue of an Executive Order of the President of the United States dated March 27, 1933, and section 5 (a) 2 of title I of the Farm Credit Act of 1933.

John T. Ashford,
JOHN T. ASHFORD,
Regional Manager.

Subscribed and sworn to before me this 28the day of February 1942.

[SEAL] ROSE K. WEEKS, formerly Rose C. Knapp,
Notary Public.

My commission expires March 1, 1947.

6 WILLIAM BUTTKE, R. 1, CORONA, S. DAK.

47–55–19–13—34W 77527

Form 3–A–1934 E. C. L.

(This instrument given to the Governor, Farm Credit Administration acting pursuant to the act of Congress approved February 23, 1934.)

PROMISSORY NOTE

$80.00. SUMMIT, S. DAK., *August 13, 1934.*

On or before August 31, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order, at Washington, D. C., the sum of eighty dollars, with interest thereon at the rate of five and one half per centum (5½%) per annum until paid.

This note is given as evidence of a loan made by the Governor of the Farm Credit Administration, which loan is secured by a lien instrument covering personal property.

County: Roberts.
State: South Dakota.

(S) WILLIAM BUTTKE. [SEAL]

7 WM. BUTTKE, RFD 1, CORONA, S. DAK.

47–55–20–13—34D 325176

Supplemental.

Form 3 FD (1934 ECL).

(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934.)

PROMISSORY NOTE

$80.00. SISSETON, S. DAK., *March 11, 1935.*

On or before November 1, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order

at Washington, D. C., the sum of Eighty and no/100 dollars with interest thereon at the rate of five and one-half per centum (5½%) per annum until paid. This note is given as evidence of a loan made by the Governor of the Farm Credit Administration.

County: Roberts.
State: South Dakota.

(S) WM. BUTTKE. [SEAL]

8 WM. BUTTKE, RFD 1, CORONA, S. DAK.

47-55-20-13—34D 325176

Supplemental.

Loan approved for $50.00. Borrower notified of reason for reduction.

Form 3 FD (1934 ECL).

(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934.)

PROMISSORY NOTE

$80.00.

SISSETON, S. DAK., *January 31, 1935.*

On or before November 1, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order, at Washington, D. C., the sum of Eighty and no/100 dollars with interest thereon at the rate of five and one-half per centum (5½%) per annum until paid. This note is given as evidence of a loan made by the Governor of the Farm Credit Administration.

County: Roberts.
State: South Dakota.

(S) WM. BUTTKE. [SEAL]

9 WM. BUTTKE, R. 1, CORONA, S. DAK.

34D 325176—47-55-20-13

Supplemental.

Form 3 FD (1934 ECL.)

(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934.)

PROMISSORY NOTE

$50.00.

SISSETON, S. DAK., *December 12, 1934.*

On or before November 1, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order, at Washington, D. C., the sum of Fifty and no/100 dollars with interest thereon at the rate of five and one-half per centum (5½%) per annum until paid. This note is given as evidence of a loan made by the Governor of the Farm Credit Administration.

County: Roberts.
State: South Dakota.

(S) WM. BUTTKE. [SEAL]

10 WM. BUTTKE, RFD 1, CORONA, S. DAK.

34D 325176 47–55–20–13

Supplemental.

Loan approved for $30.00. Borrower notified of reason for reduction.

Form 3 FD (1934 ECL)

(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934.)

PROMISSORY NOTE

$100.00.

SISSETON, S. DAK., *November 5, 1934.*

On or before November 1, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order, at Washington D. C., the sum of One hundred and no/100 dollars with interest thereon at the rate of five and one-half per centum (5½%) per annum until paid. This note is given as evidence of a loan made by the Governor of the Farm Credit Administration.

County: Roberts.
State: South Dakota.

(S) WM. BUTTKE. [SEAL]

11 WM. BUTTKE, ROUTE 1, CORONA, S. DAK.

34D 325176 47–55–20–13

Supplemental.

Loan approved for $40.00. Borrower notified of reason for reduction.

Form 3 FD (1934 ECL).

(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934.)

PROMISSORY NOTE

$80.00. SISSETON, S. DAK., *September 10, 1934.*

On or before November 1, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order, at Washington, D. C., the sum of Eighty and no/100 dollars with interest thereon at the rate of five and one-half per centum (5½%) per annum until paid. This note is given as evidence of a loan made by the Governor of the Farm Credit Administration.

County: Roberts.

State: South Dakota.

(S) WM. BUTTKE. [SEAL]

12 WILLIAM BUTTKE, ROUTE 1, CORONA, S. DAK.

47-55-20-13—34D 325176

Loan approved for $40.00. Borrower notified of reason for reduction.

Form 3 FD (1934 ECL).

(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934.)

PROMISSORY NOTE

$80.00. SISSETON, S. DAK., *July 20, 1934.*

On or before November 1, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order, at Washington, D. C., the sum of Eighty and no/100 dollars with interest thereon at the rate of five and one-half per centum (5½%) per annum until paid. This note is given as evidence of a loan made by the Governor of the Farm Credit Administration.

County: Roberts.

State: South Dakota.

(S) WM. BUTTKE. [SEAL]

13 In County Court of Roberts County

[Title omitted.]

Final report, petition for settlement, and discharge of administrator

Filed Sept. 16, 1942

Comes now George G. Remund, the duly appointed, qualified, and acting administrator of the above-entitled estate and respectfully submits to the County Court of Roberts County, South Dakota, his final report of his acts and doings from the date of his appointment to the date of this report.

That Wilhelm Buttke, Jr., also known as Wilhelm Buttke, died on December 26, 1941, in Garfield Township, Roberts County, South Dakota, and was at the time of his death a resident of said Township, County, and State.

That since the appointment of said administrator he has come into possession of the following real and personal property:

REAL PROPERTY

The Northeast Quarter, except 1.4 acres for Right of Way of the Chicago, Milwaukee, and St. Paul Railroad, in Section 27, Township 122 North, Range 49, West of the Fifth Principal Meridian in Roberts County, South Dakota; and that part of the Southeast Quarter lying North and East of the Right of Way of the Chicago, Milwaukee and St. Paul Railroad, in Section 27, Township 122 North, Range 49, West of the Fifth Principal Meridian, Roberts County, South Dakota.

PERSONAL PROPERTY

Nineteen milch cows, 8 heifers, two years and older, 13 heifers and steers, one year and over, 3 summer calves, 20 pigs, weight about 50 lbs. and under, 1 team of horses, one 10 yrs. and one 20 yrs, 1 Ford V8 automobile, 1936 model, 1 Model B John Deere Tractor, 5 years old, other old farm machinery and articles.

That after the appointment of the undersigned administrator, the widow of said deceased filed with this Court her petition, petitioning the Court to set off to her as her homestead exemp-

14 tion the Northeast Quarter of Section 27, Township 122 North, Range 49, except right of way, as aforesaid. Said land being the property that was used by the deceased and his family during his life time as their homestead.

The above-mentioned widow petitioned said Court to set off to her as her personal property exemption the following: 4 roan cows,

2 red cows, 2 white cows, 4 guernsey cows, 6 brood sows, 4 black and 2 white, 1 Ford V-8 automobile, 1936 Model.

That the above-entitled Court, under order dated June 17, 1942, set off to the said widow and minor children the said Northeast Quarter of Section 27, Township 122 North, Range 49, and the said personal property, which the said widow had petitioned and requested be set off to her as her said property exemption.

That in compliance with said Petition and Order, the undersigned administrator, did on July 8, 1942, sell all of the personal property belonging to said estate at public auction, and received for the same the total sum of $2,655.95.

That on and prior to said sale the undersigned administrator sold 20 pigs on the open market, for which he received the sum of $403.74.

That after the sale of the personal property at public auction under order of said Court, said administrator made his verified report and return of same, which has been duly approved by the County Court of Roberts County, South Dakota, and filed in the office of the Clerk of said Court, for further particulars, reference is made thereto.

That said estate has been fully probated and is now ready for final settlement and distribution.

That due and legal notice to creditors has been given, that more than six months have elapsed since the first publication of said Notice, and that a Decree of this Court has been made and entered showing Due and Legal Notice to Creditors has been given.

That the expenses of last sickness, funeral expenses, and all costs of administration have been fully paid.

That a Certificate that no Income Tax is due from said estate has been issued by the Division of Taxation of the State of South Dakota, and said Certificate is now on file in the office of the Clerk of the above-entitled Court; that the said Division of Taxation has likewise found that there was no inheritance tax due from said estate, and that the Court has made and entered its Order to that effect.

That said administrator further reports that all other taxes found to be due from said estate have been fully paid.

That the only property remaining in the hands of said administrator at this time is: That part of the Southeast Quarter lying North and East of the Right of Way of the Chicago, Milwaukee and St. Paul Railroad, in Section 27, Township 122 North, Range 49, West of the Fifth Principal Meridian, as aforesaid. That this land together with the said Northeast Quarter of Said Section is mortgaged to the Federal Land Bank in the sum of $6,000, and that a lien covers the whole of said land.

That the said Northeast Quarter has been set off to the widow and minor children as their homestead. That the said widow and minor children are entitled to a homestead exemption in the sum of $5,000. That all of the real property belonging to said estate is encumbered by a mortgage of $6,000. That by reason of such mortgage and such homestead exemption there is no equity remaining in that part of the Southeast Quarter lying North and East of the Right of Way of the Chicago, Milwaukee and St. Paul Railroad in said Section 27. That the same is of no value to the creditors hereinafter mentioned.

That the said deceased left surviving him as his heirs at law and next of kin the following: Erna Buttke, Widow, Grace Buttke, Daughter, Gilbert Buttke, Son, Leonard Buttke, Son.

That the undersigned administrator has paid the costs of administration and expenses of sale as follows:

Wilmot Enterprise—Notice of Hearing Petition and Notice to Creditors	$14.45
Notice of Sale	6.65
Clerk of Courts—Filing	15.00
Filing Fees to be incurred	3.00
Appraisal Fees	6.00
Administrator-expenses incurred for gas, postage, etc	7.50
Administrator's fees	132.38
Attorney's Fees	175.00
Total Cost of Administration	359.98

16 That the undersigned administrator incurred costs of sale in the amount of $1,305.07, leaving a balance remaining with him from said sale $1,350.88. That there has been filed by the undersigned administrator claims against said estate which with interest at this date are in the amounts herinafter set out:

United States Department of Agriculture—Emergency Crop and Feed Loans—two Notes		$412.94
	and	110.86
G. M. Phillips Estate		744.43
Wm. Buttke—two notes		723.33
	and	465.00
Whet Stone Valley Electric Association & Corporation		125.86
Note—Mable Rohlfs		1,556.25
Ray C. Sample—Note		3,703.69
F. W. Wilde—Note		1,399.33
Total		9,241.60

RECAPITULATION

Receipts received from—		
Public Sale		$2,655.95
Sale of pigs		403.74
Costs of administration	$359.98	
Costs incurred on sale	1,305.07	
Balance	1,394.64	
	3,059.69	3,059.69

That there is insufficient funds to pay said claims in full. That the undersigned administrator is of the opinion that all of the said claims are of equal rank and should be paid pro rata and that the said creditors are entitled to payment on their said claims as follows:

United States Department of Agriculture—Emergency Crop and Feed Loans	$79.53
G. M. Phillips Estate	112.33
Wm. Buttke	179.31
Whet Stone Valley Electric Association & Corporation	18.59
Mable Rohlfs	234.85
Ray C. Sample	558.87
F. W. Wilde	211.16

Wherefore, the undersigned administrator respectfully submits the foregoing report and petitions the above entitled Court that it fix a day for hearing this report and approving same; for making payment on the claims filed against said estate according to the amounts that the creditors may be entitled to receive; for making distribution of the property belonging to said estate and for the discharge of the undersigned administrator and release of his bondsmen from further liabilities in said matter.

GEORGE G. REMUND,
Administrator.

17 [*Duly sworn to by George G. Remund; jurat omitted in printing.*]

[File endorsement omitted.].

18 In County Court of Roberts County

In the Matter of the Estate of Wilhelm Buttke, Jr., also known as Wilhelm Buttke, Deceased.

Order approving final report, final decree and discharge of Administrator

Filed Nov. 2, 1942

George B. Remund the duly appointed, qualified, and acting administrator of the Estate of Wilhelm Buttke, Jr., also known as Wilhelm Buttke, deceased, having filed with this Court his duly verified Final Report and account as administrator of said estate, setting forth that said estate had been fully administered; that the property belonging to said estate was ready for distribution and praying the Court for a hearing thereon; and upon approval of said report and distribution of the property belonging to said estate that he be discharged as such administrator.

At the time that said report was filed with this Court, the Court made and entered its Order and Notice, dated and filed on September 16, 1942, fixing the 29th day of September 1942, at the hour of 1:30 o'clock in the afternoon at the County Court Rooms in the Court House in the City of Sisseton, County of Roberts and State of South Dakota, as the time and place for hearing thereon.

That the said matter coming on regularly to be heard at the time and place fixed therefor. George G. Remund, the administrator, appearing by his attorneys, Turner & McKenna, and the United States Department of Agriculture, Emergency Crop and Feed Loans, appeared by their attorney, Leo P. Flynn. It appearing to the Court that due and legal notice of said hearing had been given as required by law and order of this Court, as more particularly appears by the Affidavit of Mailing and Posting of Marjorie Benjamin.

That the United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, appearing at said hearing by the said Leo P. Flynn, as aforesaid, for the purpose of protesting to the allowance of its claim as a common creditor and requested and demanded of the Court that the said claim be allowed as a preferred claim.

That there were no further objections or protests made or filed to said report and that no other persons or claimants appeared or entered any objections to the report of said administrator.

19 After listening to the arguments of Counsel on the request that the said United States Department of Agriculture's claim be allowed as a preferred claim, it was agreed by Counsel that the hearing on said matter be continued to October 30th, 1942, at the hour of 10:00 o'clock in the forenoon. At the time to which said hearing was continued the matter came on regularly to be heard, Turner & McKenna appearing for the administrator, and Leo P. Flynn appearing for the said United States Department of Agriculture, protesting creditor. The Court having heard arguments of Counsel on said issue and the said Counsel having filed their briefs with this Court, the Court having carefully considered the same.

It is the order of this court that the said application upon motion of the said United States Department of Agriculture that its claim be allowed as a preferred claim, be and the same is hereby rejected and denied. The said claim is hereby allowed as a common creditor and the said administrator is directed to pay the said claim on the same percentage basis as all other common creditors.

It further appearing to the Court that due and legal notice to creditors has been given and that a decree of this Court has been made and entered showing such fact. That the claims of last sick-

ness and funeral expenses have been paid. That the administrator has made his inheritance tax report to the Division of Taxation of the State of South Dakota and that the said division has stipulated that said estate is exempt from payment of such tax.

It further appearing that the Division of Taxation has also entered its certificate that no income tax is due from said estate.

It further appearing to the Court that the costs of administration of said estate have been paid. That more than six months have elapsed since publication of Notice to Creditors. That said estate is ready to be closed and decree of distribution may be entered by the Court.

It further appearing to the Court that the following claims have been allowed in the following amounts:

United States Department of Agriculture—Emergency Crop and Feed Loans—two notes	$412.94 and $110.86
G. M. Phillips Estate	744.43
Wm. Buttke—two notes	723.33 and 465.09
Whetstone Valley Electric Association and Corporation	125.86
Mable Rohlfs	1,556.25
Ray C. Sample	3,703.69
F. W. Wilde	1,399.33

It further appearing to the Court that the following described property came into the hands of the administrator as such officer:

20 REAL PROPERTY

The Northeast Quarter except 1.4 acres for right of way of the Chicago, Milwaukee & St. Paul railroad in Section 27, Township 122 North, Range 49 West of the Fifth Principal Meridian and that part of the Southeast Quarter lying North and East of the right of way of said railroad in Section 27, Township 122 North, Range 49 West of the Fifth Principal Meridian, all in Roberts County, South Dakota.

PERSONAL PROPERTY

Personal property as shown in the inventory and appraisement, which personal property has been sold by the said administrator and said sale confirmed, approved, and allowed by this Court.

It further appearing that the widow of said deceased, Erna Buttke, has selected the Northeast Quarter of Section 27, Township 122 North, Range 49, except railroad right of way, as her homestead and also selected personal property shown in the Final Report as her personal property exemption. That said selection of exemptions have by order of this Court been approved and

allowed. That all of the real property hereinbefore described is mortgaged to the Federal Land Bank in the sum of $6,000, under one mortgage. That there is no equity in that part of the South-east Quarter lying North and East of the said Chicago, Milwaukee & St. Paul railroad in Section 27, Township 122 North, Range 49, aforesaid, and by reason of said mortgage, cannot be separated and sold.

That it further appears to the Court that after paying the expenses of administration, taxes, and preferred claims against said estate, that the administrator has a cash balance on hand in the sum of $1,394.64, to be paid to the Creditors having claims against said estate.

Now therefore, it is the order and decree of this court that all preferred claims against said estate including taxes, expense of last sickness and funeral expense, and costs of administration have been paid. That there is no inheritance tax due from said estate and that no income tax is due from said estate.

It is the further order and decree of this court that due and legal notice to creditors has been given as required by law.

It is the further order and decree of this court that the said report of said administrator is in due form of law and that no objections have been made or filed to the same, except as hereinbefore stated in this report. The said report is hereby approved and allowed in all things.

It is the further order and decree of this court that the claims hereinbefore mentioned and which have been approved and allowed by the administrator and this Court, be paid to the creditors in the following amounts, to wit:

21	United States Department of Agriculture—Emergency Crop and Feed Loans	$79.53
	G. M. Phillips Estate	112.33
	Wm. Buttke	179.31
	Whetstone Valley Electric Association & Corporation	18.59
	Mable Bohlfs	234.85
	Ray C. Sample	558.87
	F. W. Wilde	211.16

It is the further order and decree of this court that the persons who are entitled to inherit the property of said estate and who are the heirs at law and next of kin of the said Wilhelm Buttke, Jr., also known as Wilhelm Buttke, deceased, as follows: Erna Buttke, widow; Grace Buttke, daughter; Gilbert Buttke, son; Leonard Buttke, son; and that they are entitled to inherit the said estate in the following amounts: Erna Buttke, an undivided ⅓ interest; Grace Buttke, Gilbert Buttke, and Leonard Buttke, each an undivided ⅔ interest.

Now therefore, it is the order and decree of this court that the real property hereinbefore described as: The Northeast Quarter, except 1.4 acres for right of way of the Chicago, Milwaukee & St. Paul railroad in Section 27, Township 122 North, Range 49 West of the Fifth Principal Meridian, and that part of the Southeast Quarter lying North and East of the right-of-way of said railroad in Section 27, Township 122 North, Range 49 West of the Fifth Principal Meridian, all in Roberts County, South Dakota, be and the same is hereby assigned to and vested in the following named persons in the following amounts: Erna Buttke, widow, an undivided $\frac{1}{3}$ interest; Grace Buttke, daughter, an undivided $\frac{2}{9}$ interest; Gilbert Buttke, son, an undivided $\frac{2}{9}$ interest; Leonard Buttke, son, an undivided $\frac{2}{9}$ interest; subject, however, to the homestead right of the said Erna Buttke and minor children until they reach the age of 21 years. The said Erna Buttke to retain her homestead right in the said Northeast Quarter of Section 27 so long as she chooses to remain thereon and use the same for said homestead purposes; they to have and hold all the right, title and interest in and to said property that the said deceased had at the time of his death, or any interest that his estate has acquired therein since that date.

It is the further order and decree of this court that the personal property heretofore set off to the said widow and minor children be held and retained by them as their separate individual property free from any claims or charges against said estate.

It is the further order and decree of this court that the said estate has been fully administered; that the Final Report has by this decree been fully allowed; that all claims filed against said estate so far as the estate has funds to pay have been paid and discharged; that the property belonging to said estate has been distributed to the persons entitled to receive the same; that said estate is now closed and that the administrator and his bondsmen be and the same are hereby discharged and released from all further liability upon his filing with this Court vouchers of all the funds shown in his report to be in his hands.

Dated this 31st day of October, 1942.

By the Court:

A. O. RUNDE, *Judge.*

Attest:

[SEAL] JOHN A. KOEPPE, *Clerk.*

[File endorsement omitted.]

23 In County Court of Roberts County

[Title omitted.]

Notice of Appeal

Filed Dec. 1, 1942

To GEORGE B. REMUND, *the Administrator of the Estate of Wilhelm Buttke, Jr., also known as Wilhelm Buttke, and to Turner and McKenna, Attorneys for the Administrator:*

Notice is hereby given that the United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, being the owner and holder of a claim duly filed within the time required by law for valuable consideration against the Estate of Wilhelm Buttke, Jr., also known as Wilhelm Buttke, in the amount of $412.94 and $110.86, all of said claims having been duly filed against said estate within the time as required by law, and United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration being the present owner of said claims, and as such claimant does hereby appeal to the Circuit Court in and for the County of Roberts, State of South Dakota, from the "Order Approving Final Report, Final Decree and Discharge of Administrator," entered by the County Court of Roberts County, State of South Dakota, in the above-entitled estate, which Order
24 was dated the 31st day of October 1942, and duly filed in the office of the Clerk of Courts in and for Roberts County on the 2nd day of November 1942.

That this appeal is taken upon the grounds that the County Court of Roberts County, South Dakota, in the above-named estate, by said Order, did order, adjudge, and decree, pursuant to an Order of hearing herein allow as a common claim or as a common creditor, the claims of the United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, and that said claims aforementioned should have been allowed as requested and demanded of the Court as preferred claims, according to the provisions of priority as set forth under Section 191, Title 31, United States Code Annotated; that the said United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, feeling aggrieved thereby hereby notifies you that it appeals from said Order to the Circuit Court, and said appeal will be taken from said Order upon the question of law and fact.

Dated at Sioux Falls, South Dakota, this 27th day of November 1942.

GEORGE PHILIP,
United States Attorney for the District of South Dakota.
JOHN T. HEFFRON,
LEO P. FLYNN,
Assistants,
Attorneys for United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration.

Address: 211 Federal Building, Sioux Falls, South Dakota.
[File endorsement omitted.]

In the Circuit Court of Roberts County

U. S. DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, APPELLANT

vs.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED, RESPONDENT

Order sustaining allowance of claims

Dec. 9, 1943

The U. S. Department of Agriculture, Emergency Crop and Feed Loans, having filed two claims in the County Court of Roberts County, South Dakota, in the above-entitled estate, which were, at the date of the filing of the Final Report of the administrator, in the sum of $412.94 and $110.86. Said claims were founded upon separate notes to the said Emergency Crop and Feed Loan, U. S. Department of Agriculture.

Said administrator allowed said claims, and in his Final Report, there being insufficient money to pay all creditors in full, the administrator allowed said claims pro rata with the other claims filed against said estate; and the said two claims of the U. S. Department of Agriculture were allowed in the sum of $79.53. Upon the hearing of said claims in County Court of Roberts County, South Dakota, said Court approved the allowance of the said administrator and approved payment to the said Department of Agriculture in the sum of $79.53.

The U. S. Department of Agriculture feeling aggrieved by said allowance of said claims, within the time allowed by law, appealed said matter to the Circuit Court of Roberts County, South Dakota. Thereafter said matter coming on regularly to be heard at the time

and placed fixed therefor, on the 28th day of October 1943, at 11:00 o'clock in the forenoon at the Circuit Court rooms in the Court House in the City of Sisseton, Roberts County, South Dakota,

Leo P. Flynn, Assistant U. S. Attorney, appearing for the
27 Appellant, U. S. Department of Agriculture, Emergency Crop and Feed Loans, and Turner & McKenna appearing for the Respondent, George G. Remund, Administrator of the Estate of Wilhelm Buttke, deceased, and the Court having heard the arguments of Counsel in said matter and having examined all of the records and files in said matter and being fully advised in the premises and upon the evidence submitted therein,

It is the order of this court that the Order approving the allowance of said claims pro rata with the other claims filed against said estate and directing the administrator to pay to the appellant its pro rata share of the money in his possession in the sum of $79.53 be and the same is hereby in all things affirmed and said allowance and direction that the sum of $79.53 be paid to said administrator is hereby sustained and said administrator is directed to pay said amount, and upon such payment the administrator be released from further liability in the matter of said claims as such administrator.

Dated this 9th day of December 1943.

By the Court:

HAROLD W. KING, *Judge.*

[File endorsement omitted.]

28 In the Circuit Court of Roberts County

[Title omitted.]

Notice of Appeal to Supreme Court of South Dakota

Filed Feb. 7, 1944

To GEORGE B. REMUND, *the Administrator of the Estate of Wilhelm Buttke, Jr., also known as Wilhelm Buttke, and to Turner and McKenna, Attorneys for the Administrator:*

Notice is hereby given that the United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, being the owner and holder of a claim duly filed within the time required by law for valuable consideration against the Estate of Wilhelm Buttke, Jr., also known as Wilhelm Buttke, in the amount of $412.94 and $110.86, all of said claims having been duly filed against said estate within the time as required by law, and United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration being the present owner of said claims, and as such claimant does hereby appeal to the Supreme

Court of the State of South Dakota, at Pierre, South Dakota, from the Order of the Circuit Court of the Fifth Judicial Circuit signed by Harold W. King, Judge of said Circuit, dated December 9th, 1943, and filed in the office of the Clerk of Courts of
29 Roberts County, South Dakota, on the 13th day of December 1943, sustaining the Order Approving Final Report, made and ordered by the County Court of Roberts County, signed by A. O. Bunde, Judge of said County Court of said County and State, dated October 31st, 1942, and filed in the office of the Clerk of Courts in and for Roberts County, South Dakota, on the 2nd day of November 1942.

That this appeal is taken upon the grounds that the Circuit Court of the Fifth Judicial Circuit, by the Order signed by Judge Harold W. King, sustaining the Order of the County Court, did adjudge and decree and allow as a common claim or as a common creditor, the claims of the United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, and that said claims aforementioned should have been allowed, as requested and demanded of the Court, as preferred claims, according to the provisions of priority as set forth under Section 191, Title 31, United States Code Annotated, and that the United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, feeling aggrieved thereby, hereby notifies you that it appeals from the whole of said Order of the Circuit Court to the Supreme Court of the State of South Dakota, and said appeal will be taken from said Order upon the question of law and fact.

30 Dated at Sioux Falls, South Dakota, this 4th day of February 1944.

GEORGE PHILIP,
United States Attorney for the District of South Dakota.
LEO P. FLYNN,
Assistant,
Attorneys for United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, Appellant.

Address: 211 Federal Building, Sioux Falls, South Dakota.

Service of the above Notice of Appeal is hereby admitted this 7th day of February 1944, at Sisseton, South Dakota, by receipt of a true copy thereof.

TURNER & MCKENNA,
By FRANK R. MCKENNA,
Attorneys for Administrator.

[File endorsement omitted.]

[Clerk's certificate to following paper omitted in printing.]

32 In the Supreme Court of South Dakota

IN THE MATTER OF THE ESTATE OF WILHELM BUTTKE, DECEASED, U. S. DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, APPELLANT

vs.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED; RESPONDENT

Opinion

Filed May 20, 1946

Appeal from the Circuit Court of Roberts County, South Dakota

Honorable HAROLD W. KING, Judge

33 George Philip, United States Attorney, Rapid City, South Dakota.

Leo P. Flynn, Assistant U. S. Attorney, Sioux Falls, South Dakota.

Matthew A. Brown, Assistant U. S. Attorney, Chamberlain, South Dakota, Attorneys for Appellant.

Turner & McKenna, Sisseton, South Dakota, Attorneys for Respondent.

WARREN, Circuit Judge:

This is an appeal from an order of the Circuit Court of Roberts County, which affirmed an order of the County Court of that county and which orders denied a preference to the plaintiff, appellant, over certain other creditors in the Estate of Wilhelm Buttke, Deceased, the Administrator of his estate being the defendant, respondent, herein. The plaintiff's claim was filed in the amount of $523.80. The Final Report of the administrator showed the estate to be highly insolvent. The claims filed against the estate and to be paid aggregated $9,241.60 and the Final Report showed there was a balance on hand available to creditors in the amount of $1,394.64. The administrator sought to pro rate the amount on hand among all creditors, including the plaintiff, and the County Court so ordered and its order was affirmed by the Circuit Court.

The claim of the plaintiff is based upon seven notes all dated between July 28, 1934 and March 19, 1935, with maturity dates from August 31, 1935 to November 1, 1935 and all notes drawing interest at 5½% payable annually. All of the notes are made payable to "Governor Of The Farm Credit Administration, or Order, Washington, D. C." All of these notes are in the usual form of a promissory note, except in the following particulars:

Six of the notes have printed at the top the following:
34 "(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the Act of Congress approved June 19, 1934.)"

At the bottom of these six notes there appears the following: "This note is given as evidence of a loan made by the Governor of the Farm Credit Administration."

On one of the notes the following is printed at the top: "(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the Act of Congress approved February 23, 1934.)"

At the bottom of this note there is printed the following: "This note is given as evidence of a loan made by the Governor of the Farm Credit Administration, which loan is secured by a lien instrument covering personal property."

Accompanying the claim as filed there is an instrument designated "Memorandum" which asserts the claim is to be preferred under the laws of the United States and there is quoted in full Sections 3466 and 3467 R. S. (31 U. S. C. § 191, § 192).

The claim as filed by the plaintiff was approved by the administrator for its full amount, including interest.

The Federal Priority Statutes relied upon by plaintiff were enacted in 1797 and have come down to the present time with no material changes and read as follows:

R. S. 3466, 31 U. S. C. A. § 191:

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well
35 to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

R. S. 3467, 31 U. S. C. A. § 192:

"Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid."

Our State Statute establishes order of priority and payment of claims at SDC 35.1422 as follows:

"35.1422 Order of payment of claims. All demands against the estate of any deceased person must be paid in the following order:

"(1) The expenses of administration;

"(2) Funeral expenses, including reasonable cost of burial lot, and not to exceed fifty dollars for marker on grave;

"(3) The expenses of last sickness;

"(4) Any debt that may be due by decedent personally to servants and employees for services rendered within the sixty days next preceding his death;

"(5) Debts having preference by the laws of the United States;

"(6) All other demands against the estate, except that where a lien for any demand exists by mortgage, pledge, attachment, judgments, or execution levy, such lien shall have preference according to its priority to the extent of such demand, on any specific property on which such lien shall have attached."

Plaintiff's claim is not filed in the name of the United States of America. It can be treated as a claim filed by the United States of America only by inference, explanation and argument. In plaintiff's brief the claim is characterized as being filed by

36 "The United States of America, Department of Agriculture, Farm Credit Administration, through the Governor of the Farm Credit Administration * * * based upon loans administered by the Emergency Crop and Feed Loan Office. * * *."

Plaintiff asserts its claim should have priority because the loans were made under an Act of Congress intended for the relief of drouth and storm stricken farmers who could not obtain credit from privately owned loaning organizations, and that the act of making loans was a benevolence on the part of the Government. It is claimed the rate of interest provided for in the notes is below the ordinary commercial rate.

Defendant insists priority should not be granted and contends that the Government is not acting in its sovereign capacity in going into the money loaning business and for profit in competition with private business. Defendant further contends that this court may take judicial notice that the lending of money under the setup under which the instant loans were made has ever since continued and that such loans are being made at this time in competition with private capital and long after any emergency ceased to exist; thus placing the Government in competition with private business when ample private capital is available and thus indicating that the Government is in the private loaning business and for profit. Defendant also claims that the general rule is that Governments in creating corporations or agencies to carry on functions for it does not invest them with special privileges unless granted in the statute creating them.

Defendant also contends the act under which the loans were made is an Act of Congress setting up the Farm Credit Administration with the privilege of transacting business as such, with the right to sue and be sued exactly as any other corporation or organization doing business for profit. The plaintiff contends there is nothing in the act which provides that the Farm Credit Administration may sue or be sued. However this may be, it may
37 be observed that in this case the plaintiff is using the courts of the state in litigation to protect its interests. The court may also take judicial notice that many claims of this character have actually been sued in the courts, exemplifying that the plaintiff at least would interpret the act as giving authority for the plaintiff to sue.

The Act of Congress authorizing the loans in this case was approved February 23, 1934, Vol. 48, Part 1, U. S. Stat. at Large 354, and brief reference to some of its provisions may be made.

It is designated as "An Act To provide for loans to farmers for crop production and harvesting during the year 1934, and for other purposes."

Section 1 provides that the "Governor of the Farm Credit Administration" is authorized to make the loans to farmers.

Section 2 provides as security for the loans a "first lien" on all crops planted during the year 1934 or on livestock. The Section further provides the loans shall be made "through such agencies, upon such terms and conditions, and subject to such regulations as the Governor shall prescribe." The maximum rate of interest on the loans is not to exceed 5½% per annum, no minimum rate being set. There is also set up a very efficient collection service, it being provided the Governor may use the facilities and services of the Farm Credit Administration or of any of its officers and that the Governor may pay for such facilities; and further provides that "such institutions" are expressly empowered to enter into agreements with the Governor for such purposes. A maximum loan of $250.00 is provided except that in the discretion of the Governor he may make the loan $400.00 and the further exception that the loan shall be unrestricted in those areas that have been certified by the President of the United States to the Governor as distressed emergency areas.

38 Two conditions must exist for the applicant to obtain a loan. First he must show that he is unable to procure a loan from other sources in an amount reasonably adequate for his needs; and second, the applicant must certify that he is directly cooperating in the crop production program of the Agricultural Adjustment Act or that he is "not proposing to increase his 1934 production of basic agricultural commodities in a manner detrimental to the success of such program."

Section 3 provides that the moneys loaned are declared to be impressed with a trust to accomplish the purposes provided for in the act "until the moneys loaned pursuant to this Act have been used for the purposes contemplated by this Act, * * *".

Section 4 invests the Governor with very wide authority and power to set up the loaning structure. Even without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States the Governor may fix the compensation and duties of the agents, officers and employees that may be necessary to carry on the purposes of the Act.

Section 5 provides for an appropriation of forty million dollars to carry out the provisions of the Act and the Act concludes with the following:

"Any moneys so appropriated, and all collections of both principal and interest on loans made under this Act, may be used by the Governor for all necessary administrative expenses in carrying out the provisions of this Act and in collecting outstanding balances on crop production, seed and feed loans * * *".

The Act of Congress just considered appears to set up a complete loaning agency with wide powers in the Governor, as to its operation, and with an appropriation of money from the Government to sustain the organization. Subsequent legislation has continued in one form or another the loaning of money to farmers under the Farm Credit Administration, the system
39 of loaning still existing.

Plaintiff's counsel contends there should be priority of the claims, based upon a loan made under the foregoing Act. Considering the claim as it relates to our State Statute in the order of payment, the expenses of administration and burial expenses would have priority over the plaintiff's claim. The plaintiff's claim would have preference over classes 3 and 4 of our statute which are the expenses of last sickness and debts due by the decedent to servants and employees for services rendered within sixty days preceding his death. The question here to be determined is whether the plaintiff's claim should be designated within class 5 under our state law as a debt having preference by the laws of the United States or whether it should be in class 6 applying to general creditors.

In Sloan Shipyards Corporation et al. v. United States Shipping Board Emergency Fleet Corporation and the United States of America, 258 U. S. 549, 66 L. Ed. 762, there are three cases combined, all bringing into question the standing of the United States Shipping Board Emergency Fleet Corporation in the courts; one of the cases involving directly the right of priority over the other creditors in bankruptcy by the Fleet Corporation. The Shipping

Act of Sept. 7, 1916, being Chap. 451, 39 Stat. at L. 728, Comp. Stat. § 8146a Fed. Stat. Anno., Supp. 1918 P. 785, was passed in contemplation of the possibility of war and to create a naval reserve and merchant marine, and under it the United States Shipping Board was established, and given power to form a corporation under the laws of the District of Columbia, and it did organize the United States Shipping Board Emergency Fleet Corporation. The Act contemplated that the corporation named should be organized so that private persons might be minority stockholders, the Shipping Board to be a majority stockholder. However, the United States purchased all of the stock, thereby furnishing all of the money for this governmental agency. This corporation filed its claim with the trustee in bankruptcy of the Eastern Shore Ship Building Corporation and claimed priority over other creditors, all of the money of the corporation having been furnished by the Government. This priority was denied by the referee in bankruptcy, the District Court and the Circuit Court of Appeals and affirmed in the opinion written by Justice Holmes from which we quote the following:

"The third case, as we have said, is a claim of priority in bankruptcy. It was asserted against the estate of the Eastern Shore Shipbuilding Corporation, in the district court for the southern district of New York, under a contract similar to that last described, made by that company with the Fleet Corporation, 'representing the United States of America,' to construct six harbor tugs. The claim was presented by the Fleet Corporation in its own name, but was put forward by it as an instrumentality of the government of the United States. It was denied successively by the referee, the district court, and the circuit court of appeals, on the grounds that the Fleet Corporation was a distinct entity, and that, whatever might be the law as to a direct claim of the United States, the Fleet Corporation stood like other creditors and was not to be preferred. 274 Fed. 893. The considerations that have been stated apply even more obviously to this case. The order is affirmed."

To the foregoing decision Chief Justice Taft filed a dissenting opinion as it related to the first and second cases under consideration, but in which he concurs with the decision in the third case which involved the question of priority. He limits the preference or priority of the United States in bankruptcy to claims of the United States for taxes and we quote the following from his dissenting opinion:

"As to the preference claimed against a bankrupt in No. 526 by the Fleet Corporation, I concur in the conclusion of the court that it cannot be allowed under the statute as to preferences

41 in bankruptcy because I do not think it extends to claims of the United States except those for taxes."

In the case of United States of America v. Guaranty Trust Co of New York et al,, 280 U. S. 478, 74 L. Ed. 556, the Supreme Court was considering the right of priority of the United States over other creditors under Revised Statutes, § 3466 U. S. C. A., Title 31, § 191. During World War I when the railroads were under Federal control the railroad transportation system became in distress financially. Title 2 of the Transportation Act of 1920 provided for the loaning of enormously large amounts to meet the pressing need of the railroads. These loans to the railroads were made to them directly by the United States and not through any of the corporate or other fiscal agencies of the United States handling business for it. The Minneapolis & St. Louis Railroad had obtained one of these loans and in 1923 the Federal Court of Minnesota appointed a receiver of it and the usual order issued for proof of claims. It was conceded the railroad was insolvent. The United States presented four claims arising under Title 2 of the Transportation Act of 1920 and as to each claim it asserted that that it was entitled to priority and preference over the claims of all other creditors under the priority statute. Upon adverse decisions by the master and the district court and in the circuit court of appeals the case was presented to the Supreme Court. In upholding the decisions below and denying the preference to the United States we quote the following from this decision:

"These appropriations were made in order to meet a pressing need. At the time of the passage of Transportation Act 1920, most of the railroads of the United States lacked funds for necessary improvements, equipment, and expansion of facilities. Some of the carriers needed funds, also, to meet maturing obligations. The credit of many carriers was seriously impaired. There was a general reluctance among investors to purchase new railroad securities even of the strongest railroads. Congress deemed it important to preserve for the nation substantially the whole existing transportation system. Compare New England
42 Divisions Case (Akron, C. & Y. R. Co. v. United States) 261 U. S. 184, 190, 67 L. Ed. 605, 609, 43 Sup. Ct. Rep. 270. In order to accomplish this, it was thought necessary that the United States should, to a certain extent, finance the carriers until it would become possible to restore their credit, by increase of rates or otherwise. The provisions of title II. of Transportation Act 1920 were framed to that end. Through them, the financial aid which had been given during Federal control was to be extended for a further period.

"To have given priority to debts due the United States pursuant to title II would have defeated the purpose of Congress.' It not only would have prevented the reestablishment of railroad credit among bankers and investors, but it would even have seriously impaired the market value of outstanding railroad securities. It would have deprived the carriers of the credit commonly enjoyed from supply men and others; would have seriously embarrassed the carriers in their daily operations; and would have made necessary a great enlargement of their working capital. The provision for loans under § 210 would have been frustrated. For carriers could ill afford voluntarily to contract new debts thereunder which would displace, pro tanto, their existing bonded indebtedness. The entire spirit of the act makes clear the purpose that the rule leading to such consequences should not be applied."

The facts in the foregoing decision are practically an exact parallel with the case we have under consideration. In one case the Government loaned money direct to the needy railroads to assist and sustain the transportation system, and in our case the money was loaned to needy farmers with the thought of assisting and sustaining agriculture which was in distress. The reasons given why the United States should not claim priority in this case are equally pertinent in our case under consideration, as knowledge of priority of Government claims certainly would have been a handicap to a farmer in using his credit with local bankers and investors. We consider this decision controlling in this case.

Without discussion of them the following supporting decisions are cited: Keifer & Keifer, a copartnership v. Reconstruction Finance Corporation and Regional Agricultural Credit Corporation of Sioux City, Iowa, 306 U. S. 381, 83 L. Ed. 784; United States v. Strang, 254 U. S. 491, 65 L. Ed. 368; Eichberg v. United States Shipping Board Emergency Fleet Corporation, 273 F. 986; Luxton v. North-River Bridge Company, 153 U. S. 525, 38 L. Ed. 808; M'Culloch v. State of Maryland et al., 4 Wheat. 316, 4 L. Ed. 579; Ohio v. Helvering, 292 U. S. 360, 78 L. Ed. 1307; Davis v. Pullen (C. C. A. 1st) 277 F. 650; Guarantee Title & Trust Co. v. Title Guaranty & Surety Co., 224 U. S. 152, 56 L. Ed. 706; Lewis v. United States, 92 U. S. 618, 23 L. Ed. 513; United States v. State Bank, 6 Pet. 29, 8 L. Ed. 308; United States v. Mason, 218 U. S. 517, 54 L. Ed. 1133; La Roque v. United States, 239 U. S. 62, 60 L. Ed. 147; Bank of the United States v. Planters' Bank of Georgia, 9 Wheat. 904; 6 Ed. 244; Cook County National Bank v. United States, 107 U. S. 445, 27 L. Ed. 537; State of Georgia v. City of Chattanooga, 264 U. S. 472, 68 L. Ed. 796.

Appellant's counsel in supplemental brief cites as an authority the decision of United States of America v. Emory, 314 U. S. 423,

86 L. Ed. 315, decided Dec. 15, 1941. This decision is illuminating as disclosing the conflict of opinion that has arisen in the Federal Courts, particularly in recent years, in reference to Government priorities. It is significant to observe that this decision, written by Justice Byrnes, reverses the Circuit Court of Appeals and the decision is a five to four decision by the Supreme Court. There is a very vigorous dissenting opinion, written by Justice Reed, and Justices Roberts, Douglas and Jackson concur in the dissent. The dissenting opinion points out that: "From past interpretation we learn that the traditional function of § 3466 is the assurance of the public revenue, whatever may be the expense to the competing creditors," and that the majority opinion disturbs well settled law and precedents. The majority opinion does not pretend to overrule or reverse previous opinions of the court but seeks to explain them. The facts of this case are unusual. On September 23, 1935, the St. James Distillery, a corporation, executed a note to the Industrial Bank and Trust Company of St. Louis. On July 14, 1936, the bank endorsed the note and delivered it to the Federal Housing Administration, acting on behalf of the United States, under a contract of insurance and guaranty provided for in Title I of the National Housing Act. The United States, through the Federal Housing Administration, reimbursed the bank in the amount of $5,988.88, the balance due on the note. Emory had a claim for wages and asserted priority on his wage claim. These loans made by private investors, under the Federal Housing Act, were term loans not exceeding five years, and were guaranteed to the extent of 20% by the United States. No reason is shown in this opinion why this bank held this loan only about nine months.

In the decision of Federal Housing Administrator v. Moore, Trustee in Bankruptcy, 90 F. 2d 32, decided May 10, 1937 a claim in bankruptcy had been filed by the Federal Housing Administrator. It was based upon money that the Government had furnished to reimburse a bank that made a loan that was not fully paid. Priority over other creditors was claimed in bankruptcy. The District Court denied this preference and on appeal to the Circuit Court of Appeals from the Ninth Circuit, by the Federal Housing Administrator. Judge Matthews sustained the District Court and denied priority and in doing so used the following language:

"The contention cannot prevail. Appellant is not the United States. The United States is not a party to this proceeding. The bankrupt was never indebted to the United States. Its indebtedness was to the bank. The United States has no claim against the bankrupt estate, and has asserted none. If the United States had any such claim, it could, and undoubtedly would, assert it in its

own name. There is no reason why, in a bankruptcy court, or elsewhere, the United States should call itself 'Federal Housing Administrator'."

But, conceding that the decision written by Justice Byrnes should be considered as authority that priority should be had on a claim filed under the National Housing Act, it should be noted there is not the slightest suggestion in the decision that it would be applicable to the case we have under consideration.

45 Justice Byrnes particularly refers to and analyzes the decision of United States v. Guaranty Trust Co., supra, and recognizes and adopts its merits in assisting a financially distressed railroad transportation system. The same rule of law should apply when Government assistance is given to distressed agriculture.

We conclude it is much more logical to place the notes under consideration here within the decision of United States v. Guaranty Trust Co., supra, the facts being analogous, and deny priority, than to follow the decision of United States v. Emory, supra, where no analogy of fact appears.

Finding no error the order of the circuit court is affirmed.

Warren, Circuit Judge, sitting for Polley, J.

All the Judges concur.

[Clerk's certificate to following paper omitted in printing.]

47 In Supreme Court of South Dakota

April Term, A. D. 1946

Present: HERBERT B. RUDOLPH, Presiding Judge: E. D. ROBERTS, ST. CLAIR SMITH, and VERNON R. SICKEL, Judges of said Court, and the officers thereof:

IN THE MATTER OF THE ESTATE OF WILHELM BUTTKE, DEC. U. S. DEPARTMENT OF AGRICULTURE EMERGENCY CROP AND FEED LOANS, PLAINTIFF AND APPELLANT

vs.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED, DEFENDANT AND RESPONDENT

Judgment

Filed May 20, 1946

This action coming on to be heard at the April A. D. 1945 Term of this Court at the Supreme Court Room in the City of

Pierre, State of South Dakota, upon the merits of the case and upon argument by counsel and the Court having advised thereon and filed its decision in writing.

It is considered, ordered, and adjudged, that the order of the Circuit Court, within and for Roberts County, appealed from herein, be and the same is hereby affirmed.

And it is further ordered, that this action be and it is hereby remanded to said Circuit Court for further proceedings according to law and the decision of this Court.

And it is further ordered and adjudged, that respondent have and recover of the appellant costs and disbursements on this appeal, expended, taxed and allowed at Thirty and no/100 Dollars.

By the Court,

[SEAL] HERBERT B. RUDOLPH,
Presiding Judge.

Attest:

J. W. RAISH, *Clerk.*
By ——— ———, *Deputy Clerk.*

[File endorsement omitted.]

48 In Supreme Court of South Dakota

Remittitur

Filed June 10, 1946

Be it remembered, that at a term of the Supreme Court of the State of South Dakota, begun and held at Pierre, State of South Dakota, on the first Tuesday of April A. D. 1946, To wit: On the twentieth day of May A. D. 1946.

Present: HERBERT B. RUDOLPH, Presiding Judge; E. D. ROBERTS, ST. CLAIR SMITH, and VERNON R. SICKEL, Judges of said Court. The following proceedings were had and the following judgment was entered, to wit:

49 File No. 8711,

April Term A. D. 1946

IN THE SUPREME COURT,
State of South Dakota, ss:

Present: HERBERT B. RUDOLPH, Presiding Judge; E. D. ROBERTS, ST. CLAIR SMITH, and VERNON R. SICKEL, Judges of said Court, and the officers thereof:

IN THE MATTER OF THE ESTATE OF WILHELM BUTTKE, DEC., U. S. DEPARTMENT OF AGRICULTURE EMERGENCY CROP AND FEED LOANS, PLAINTIFF AND APPELLANT

vs.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED, DEFENDANT AND RESPONDENT

This action coming on to be heard at the April A. D. 1945 Term of this Court at the Supreme Court Room in the City of Pierre, State of South Dakota, upon the merits of the case and upon argument by counsel and the Court having advised thereon and filed its decision in writing.

It is considered, ordered, and adjudged, that the order of the Circuit Court, within and for Roberts County, appealed from herein, be and the same is hereby affirmed.

And it is further ordered, that this action be and it is hereby remanded to said Circuit Court for further proceedings according to law and the decision of this Court.

And it is further ordered and adjudged, that respondent have and recover of the appellant costs and disbursements on this appeal, expended, taxed and allowed at Thirty-one and no/100 Dollars.

By the Court,

[SEAL] HERBERT B. RUDOLPH,
Presiding Judge.

Attest:

J. W. RAISH, *Clerk.*
By ——— ———, *Deputy Clerk.*

50 IN THE SUPREME COURT,
State of South Dakota, ss:

I, J. W. Raish, Clerk of the Supreme Court, within and for the State of South Dakota, do hereby certify that the above and foregoing is a full, true, correct and complete transcript and copy of the judgment of the Supreme Court of the State of South Dakota, in the above entitled action, wherein the U. S. Department of Agriculture Emergency Crop and Feed Loans is Plaintiff and Appellant versus George G. Remund, as Administrator of the Estate of Wilhelm Buttke, deceased, Defendant and Respondent, as the same now remains of record in said Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this 10th day of June A. D. 1946.

By J. W. RAISH, *Clerk.*
By ——— ———, *Deputy Clerk.*

51 [File endorsement omitted.]

52 In the Supreme Court of the United States
October Term, 1946

IN THE MATTER OF THE ESTATE OF WILHELM BUTTKE, DECEASED, U. S. DEPARTMENT OF AGRICULTURE EMERGENCY CROP AND FEED LOANS, PETITIONER

v.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED, RESPONDENT

Stipulation as to record

Filed Aug. 13, 1946

Subject to this Court's approval, it is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled case that;

1. The Respondent specifically reserves the right to move the dismissal of said writ of certiorari for the reason that the application for and the serving of the notice thereof were not made in proper time.

2. It is further stipulated and agreed that Respondent by this stipulation does not waive his right to move the dismissal of said writ of certiorari by reason of the failure of petitioner to exhaust its remedies in the Supreme Court of the State of South Dakota; particularly in that it did not move for a re-hearing upon the Judgment of the Supreme Court of the State of South Dakota.

3. It is specifically stipulated and agreed that Respondent does not by this stipulation waive any of his rights to move for dismissal of said writ of certiorari, and it is further stipulated
53 that this stipulation shall not extend to petitioner any rights or privileges which it does not now have, nor shall this stipulation bar respondent of any rights which it now has; that this stipulation shall extend to the following subjects only and except as to those subjects the position of the petitioner and respondent shall be and remain in all things the same as if this stipulation had not been entered into.

4. For the purpose of the petition for a writ of certiorari and, in the event the petition be granted, for the purpose of hearing and determining the case on the merits, the printed record shall consist of the following:

	Pages of Transcript
a. Proof of Claim of United States Department of Agriculture	13-17
b. Notes upon which claim of United States Department of Agriculture was based	18-24

Pages of Transcript

c. Final Report, Petition for Settlement and Discharge of Administrator 59–63
d. Order of County Court approving Final Report, Final Decree and Discharge of Administrator 68–72
e. Notice of Appeal to Circuit Court 73–75
f. Order of Circuit Court Affirming Judgment of County Court 86–87
g. Notice of Appeal to Supreme Court.
h. Judgment of Supreme Court.
i. Remittitur.
j. Opinion of Supreme Court.

5. Any of the parties may refer in their briefs and arguments to any part of the original record now on file in this Court.

August 5, 1946.

J. Howard McGrath,
J. Howard McGrath,
Solicitor General.

August 8, 1946.

Frank R. McKenna,
Attorney for Respondent.

U. S. GOVERNMENT PRINTING OFFICE: 1946

Supreme Court of the United States

No. 417 —, October Term, 1946

Order allowing certiorari

Filed October 28, 1946

The petition herein for a writ of certiorari to the Supreme Court of the State of South Dakota is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

724993—46

U. S. GOVERNMENT PRINTING OFFICE: 1946